

EXPLANATORY MEMORANDUM TO
THE DEMOCRATIC REPUBLIC OF THE CONGO (SANCTIONS) (OVERSEAS
TERRITORIES) (AMENDMENT) ORDER 2017

2017 No. 160

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends the Democratic Republic of the Congo (Sanctions) (Overseas Territories) Order 2015 (S.I. 2015/1382) (the “principal Order”) to give effect in the Overseas Territories to changes in the sanctions regime against the Democratic Republic of Congo (“DRC”) adopted by the Council of the European Union. In particular, the Order extends the application of the asset freeze provided for in the principal Order to persons and entities designated under new EU autonomous listing criteria.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Order comes into force on the day after the day on which it is laid in Parliament.
- 3.2 The Order extends the application of the asset freeze provided for in the principal Order to persons and entities designated under new autonomous criteria adopted by the European Union. The new criteria, and designations under them, were adopted by the EU on 12 December 2016 and took immediate effect throughout the EU. The overriding policy imperative is to ensure that these measures are given effect with full coverage in the Overseas Territories as soon as possible, in order to maximise the effectiveness of the sanctions and to minimise the risk of asset flight. With this in mind, the Foreign and Commonwealth Office is not complying with the 21 day convention on this occasion.
- 3.3 The need for the amendment to the definition of “insurance” and the omission of the definition of “person” as provided for in article 2(3) of this Order were identified in the Committee’s fifth report of session 2015-16 (HL Paper 39; HC 352-v). Accordingly this Order will be issued free of charge to all known recipients of the principal Order.

Other matters of interest to the House of Commons

- 3.4 As this instrument is not subject to any Parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise.

4. Legislative Context

- 4.1 This Order is made in exercise of statutory powers under the Saint Helena Act 1833, the British Settlements Acts 1887 and 1945, and the legislative power of the Royal Prerogative.

- 4.2 The statutory and prerogative powers to legislate for the Overseas Territories, to implement sanctions measures, are applicable to the Overseas Territories as follows:
- (a) the Saint Helena Act 1833 applies to St Helena;
 - (b) the British Settlements Acts 1887 and 1945 apply to Ascension and Tristan da Cunha, British Antarctic Territory, the Falkland Islands, Pitcairn (including Henderson, Ducie and Oeno Islands), and South Georgia and the South Sandwich islands);
 - (c) the prerogative legislative power is applicable to Anguilla, British Indian Ocean Territory, Cayman Islands, Montserrat, the Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands, and the Virgin Islands.

5. Extent and Territorial Application

- 5.1 The extent and territorial application of this instrument are as set out in the principal Order. The extent of this instrument is: Anguilla, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, the Falkland Islands, Montserrat, Pitcairn (including Henderson, Ducie and Oeno Islands), St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, the Turks and Caicos Islands and the Virgin Islands (“the Territories”).
- 5.2 The application of this instrument is the Territories and:
- (a) any person elsewhere who is a British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject, a British National (Overseas) or a British protected person and is ordinarily resident in a Territory;
 - (b) a body incorporated or constituted under the law of a Territory; and
 - (c) any person onboard a ship or aircraft that is registered in a Territory.

6. European Convention on Human Rights

- 6.1 As the instrument is not subject to Parliamentary procedure, no statement is required.

7. Policy background

What is being done and why

- 7.1 The principal Order gives effect in specified Overseas Territories to the sanctions regime against the DRC adopted by the United Nations Security Council in resolution 1596 (2005), as expanded by subsequent resolutions and most recently renewed by resolution 2293 (2016) of 23 June 2016. It also reflects the implementation of those sanctions by the European Union in Council Decision 2010/788/CFSP of 20 December 2010 (as amended) and Council Regulation (EU) No. 1183/2005 of 18 July 2005 (as amended).
- 7.2 On 12 December 2016, the Council of the European Union adopted Decision (CFSP) 2016/2231 and Regulation (EU) 2016/2230 establishing criteria for Union autonomous sanctions listings in response to the Council’s concern at the political situation in the DRC. The new EU listing criteria target persons and entities:

(a) obstructing a consensual and peaceful solution towards elections in DRC, including by acts of violence, repression or inciting violence, or by undermining the rule of law;

(b) involved in planning, directing or committing acts that constitute serious human rights violations or abuses in DRC; and

(c) associated with those referred to in points (a) and (b).

7.3 Seven individuals have been listed pursuant to the new EU autonomous listing criteria in Annex Ia to Council Regulation (EU) 2016/2230 of 12 December 2016.

7.4 This Order gives effect to the new EU autonomous sanctions against the DRC in the Overseas Territories. It also updates the penalty provisions in respect of specified territories and makes other minor technical amendments.

Consolidation

7.5 The principal Order consolidated a number of previous Orders. The Foreign and Commonwealth Office will keep the need for further consolidation under review.

8. Consultation outcome

8.1 The Overseas Territories have been consulted on the Order in draft.

9. Guidance

9.1 No guidance will be issued.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies in the United Kingdom.

10.2 There is no impact on the public sector in the United Kingdom.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

12. Monitoring & review

12.1 United Nations sanctions are monitored and reviewed by the United Nations Security Council, and European Union measures are monitored and reviewed by the Member States of the European Union. This Order and the principal Order will be reviewed and amended as appropriate following any further modifications to the sanctions regime by the United Nations or the European Union.

13. Contact

Natasha Harrington at the Foreign and Commonwealth Office can answer queries regarding the instrument. Telephone: +44 (0)20 7008 6123 or email: Natasha.harrington@fco.gov.uk